

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

1:06CV173-1-MU

1:05cv357-3-mu (LEAD CASE)

DENNIS VAN DYKE, et al.,

Plaintiffs,

Vs.

JR DAVIS, et al.,

Defendants.

ORDER

THIS MATTER comes before the Court upon an initial review of Plaintiff's¹ Complaint pursuant to 42 U.S.C. § 1983, filed May 22, 2006.

As an initial matter, this Court notes that Plaintiff fails to state a claim against Defendant Rutherford Electric Membership Corporation. Plaintiff alleges in his Complaint that it is his understanding that Rutherford Electric Membership Corporation turned the power back on at his brother's house creating a fire hazard. Such an allegation fails to state a § 1983 claim and Defendant Rutherford Electric Membership Corporation is dismissed from this case.

As to Plaintiff's other allegations, it has come to the Court's attention that on December 9, 2005, Plaintiff filed a Complaint (case no. 1:05CV357-3-MU) in this Court that contains related and identical claims to those contained in the present Complaint. The

¹ The Court notes that Plaintiff lists two other individuals as plaintiffs in this case. These individuals, however, did not sign the Complaint. Nor did they submit in forma pauperis applications or filing fees. Consequently, these individuals are dismissed from this case.

remaining claims² which form the basis of the instant Complaint are therefore duplicitous of claims filed by Plaintiff in an earlier case that is still pending before this Court. Consequently, this case is closed.

IT IS, THEREFORE, ORDERED that:

1. Plaintiffs Mark Van Dyke and Donna Medcalf are DISMISSED;
2. Defendant Rutherford Electric Membership Corporation, Defendant Winslow and Defendant Police Rape are DISMISSED;
3. The Clerk shall consolidate case numbers 1:05CV357 and 1:06CV173; and
4. The Clerk shall statistically terminate case number 1:06cv173.

² In his 2006 Complaint Plaintiff alleges that Defendants JR Davis, a police officer, and Chris Winslow, a sheriff's deputy, fired over two dozen shots at the transformer of his brother's house and stole over \$ 100,000.00 worth of CD's, DVD stereo equipment, Elvis Presley collectibles, silver change, his children's college funds, jewelry, coats, and electronics from himself and his brother. Plaintiff also conclusorily asserts that the Defendants killed his dog, shot at him, and raped him. Plaintiff asserts that Defendants bragged that they did these deeds for their master Satan. Although Plaintiff alleged in his 2005 Complaint that Defendant Davis blackmailed and assaulted him, threatened his family and got Plaintiff hooked on drugs, it does not appear that Plaintiff raised these precise claims in his 2005 Complaint. These allegations against Defendants Davis and Winslow, however, are dismissed based upon the reasoning set forth in this Court's March 20, 2006, Order in case no. 1:05cv357 which dismissed other similar claims against JR Davis on the basis that they were fantastic, delusional, conclusory, and unsupported. See Denton v. Hernandez, 504 U.S. 25, 32 (1992)(in determining whether a complaint is factually frivolous, a district court is not required to "accept without question the truth of plaintiff's allegations," but rather is permitted to apply common sense and reject the fantastic); Adams v. Rice, 40 F.3d 72, 74 (4th Cir. 1994)(a court has the authority to dismiss claims that are obviously "fantastic" or delusional" and a plaintiff "must present more than naked allegations.")). Any claims with regard to the alleged individual Police Rape are dismissed for the same reasons.

Signed: June 6, 2006

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

